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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 4811 of 2004

Petitioner Brij Mohan Shrivastava

Versus

Respondents Raipur Development Authority through its Chief Executive Officer, R.D.A. Building, G.E. Road, Raipur and others.

POST FOR ORDER 15-10-2007

Sd/-
Satish K. Agnihotri
Judge

15-10-2007

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HIGH COURT OF CHHATTISGARH: BILASPUR

Writ Petition No. 4811 of 2004

Petitioner

Brij Mohan Shrivastava, S/o. Shri Sudama Prasad Shrivastava, Aged about 83 years, R/o. House No. 4-C, Sector-1, Devendra Nagar, Raipur (CG).

Versus

Respondents

1 Raipur Development Authority through its Chief Executive Officer, R.D.A. Building, G.E. Road, Raipur.

2 Shri Narsingh Mandal, Ex. Chairman, Raipur Development Authority, H.No. 13/C Sector -1, Devendra Nagar, Raipur (CG).

3 P.L. Gajbhiye, S/o. D.R. Gajbhiye, Ex. Chief Executive Officer, H.No.21/692, D1-104, Sector -5, Devendra Nagar, Raipur (CG).

(Writ Petition under Article 226/227 of the Constitution of India.)

SB: Hon'ble Mr. Satish K. Agnihotri, J.

Present: Shri P. Diwakar, Sr. Advocate with Shri Kunal Das, counsel for the petitioner.
Shri Pankaj Agrawal, counsel for the respondent No.1.
Shri Kishore Patel, counsel for the respondents No. 2 & 3.

ORDER

(Passed on 15th October, 2007)

By this petition, the petitioner seeks a direction to the respondent No.1 to grant the possession of the House No. H.I.G. C/13, Sector -1 in Devendra Nagar, Scheme, Raipur.

2) The indisputable facts, in nutshell, as stated by the petitioner are that in the year 1978 the wife of the petitioner namely Smt. Krishna Kumari Shrivastava made an application and deposited the required

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amount for allotment of the house in Devendra Nagar Scheme, Raipur. The allotment of the House No. H.I.G. C/13. Sector 1 was confirmed in her favour by memo dated 3-7-1982 (Annexure P/1). On 23-11-1982, an alleged application was moved before the respondent No.1 in the name of Krishna Kumari Shrivastava regarding transfer of the house of the wife of the petitioner in the name of one Kiran Devi Sancheti and the application was received by the respondent No.3 who was the then Chief Executive Officer of Raipur Development Authority. On the same day, the respondent No.3 even without noticing the wife of the petitioner Smt. Krishna Kumari Shrivastva, passed the order of transfer of the said house on a payment of 10% of the cost of the land and the said house was transferred in the name of Kiran Devi Sancheti vide order dated 23-11-1982 (Annexure P/2). On 10-12-1982 an application (Annexure P/5) was made by Krishna Kumari Shrivastava, wife of the petitioner to the Chief Executive Officer for conducting an enquiry regarding the false application of transfer of the house in favour of Smt. Kiran Sancheti and also to quash the order of transfer dated 23-11-1982 (Annexure P/2). On receiving the application dated 10-12-1982 (Annexure P/5) the transfer order dated 23-11-1982 (Annexure P/2) of the house of the wife of the petitioner was cancelled vide order dated 21-12-1982 (Annexure P/6) and the same was maintained in the name of the wife of the petitioner (original allottee).

3) Thereafter, the wife of the petitioner made an application before the respondent/authority to transfer the said house in the name of her husband namely the petitioner. The said application was accordingly allowed and by order dated 9-2-1983 (Annexure P/8), the said house was transferred in the name of the petitioner. The petitioner was directed by the Chief Executive Officer by letter dated 16-5-1983

(Annexure P/15), a copy was endorsed to the petitioner, to deposit a sum of Rs.12,000/- within a period of seven days, failing which the allotment of the house would be cancelled. The petitioner or his wife did not make any attempt to deposit the amount and the wife of the petitioner, a copy addressed to the petitioner was served a letter dated 9-9-1987 (Annexure P/18) canceling allotment of the House No.H.I.G. C/13, Sector-1, in Devendra Nagar Scheme, Raipur and the original allottee, the wife of the petitioner was asked to take back the registration amount.

4) The wife of the petitioner filed a civil suit being No.222/92 which was dismissed on 30-1-1997 (Annexure R/3). In the meantime, the disputed house was let out to one Ganguram Baghel on the basis of the order dated 26-4-1995 (Annexure P/19) passed by the Rent Controlling Authority.

5) It is further stated by the petitioner that on cancellation of the allotment of the house, the same was allotted to the respondent No.2 on 11-3-1996. After dismissal of the suit, the petitioner filed a case before the District Consumer Forum, Raipur, which was dismissed on 29-6-2000 (Annexure R-1/2). The petitioner preferred an appeal being No. 1223/2000 before M.P. State Consumer Disputes Redressal Commission which was dismissed on 10-4-2002 (Annexure R-1/3). After having lost in the civil court as well as in the consumer forums, the petitioner preferred this writ petition on 8-12-2004 for the relief as stated above.

6) Learned counsel appearing for the petitioner, Shri P. Diwakar, would submit that it is true that the petitioner had not deposited the amount of the house, pursuant to the notice dated 16-5-1983 (Annexure

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P/15) till date. However, subsequent allotment in favour of the officers of the respondent No.1 is illegal and arbitrary. Learned counsel would further submit that the petitioner ought to have been given one more opportunity to deposit the cost of the house, the petitioner is an old man and the allotment granted in favour of the wife, later on, transferred in his name should not be cancelled without giving opportunity.

7) Per contra, Shri Pankaj Agrawal, learned counsel appearing for the respondent No.1 –authority submitted that the petitioner and his wife were given sufficient opportunity to make the payment of the cost of the land and the cost of the house. The petitioner failed to deposit a sum of Rs.12,000/- for allotment of the house, pursuant to the letter dated 16-5-1983 (Annexure P/15) and the petitioner has not made any attempt to deposit the same till date. The petitioner has moved the Civil Court for the relief claimed in this petition as well as thereafter in the District Consumer Forum and the M.P. State Consumer Disputes Redressal Commission . The petitioner did not succeed. After having availed all the remedies as available in the Civil Court as well as in the District Consumer Forum and M.P. State Consumer Disputes Redressal Commission, the petitioner cannot seek a direction for grant of allotment of the said house on the basis of the allotment order dated 3-7-1982 (Annexure P/1) and the transfer order dated 9-2-1983 (Annexure P/8) in this petition.

8) I have heard learned counsel for the parties and perused the pleadings and documents appended thereto. I have also gone through the original file of the case. It is evident that the petitioner had already availed remedy in the Civil Court wherein the suit was dismissed for the

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same relief, thereafter the petitioner moved the District Consumer Forum, Raipur and the same was dismissed by order dated 29-6-2000. Thereafter, appeal being No.1223/2000 filed by the petitioner in M.P. State Consumer Disputes Redressal Commission, was also dismissed on 10-4-2002. M.P. State Consumer Disputes Redressal Commission substituted the order passed by the District Consumer Forum which reads as under:

> "6 However, when the possession of the house was not delivered and the possession of the house was delivered to respondent no.2, the respondent No.3 ought to have returned the amount deposited to the appellant, which was with-held and utilized by the respondent no.3. In the circumstances, the ends of justice would meet if the respondent no.3 is ordered to pay the amount deposited with interest thereon at the rate of 12% p.a., the date of delivery of the possession of the house to the respondent no.2, that is 8-2-1996, within a period of two months from the date of receipt certified copy of this order failing which the interest shall be payable at the rate of 15% p.a."

9) Pursuant to the order of the State forum, the petitioner was paid a sum of Rs.35,175 in May, 2003 (Annexure R-1/4). The petitioner has received the amount without protest as he lost legal battle in the Civil Court as well as in the consumer forums which remain unchallenged and attained finality. The petitioner does not challenge the validity of the orders passed by the State forum as well as the order passed by the Civil Court. The petitioner claimed the similar relief which has been declined by the Civil Court as well as by the State forums. Thus, the petitioner cannot be granted the same relief in this petition, even otherwise, this petition lacks substance. The order passed by the authorities is justified and needs no interference. Even otherwise, this petition suffers from grave laches and delay, which is unexplained.

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10) In view of the foregoing and the reasons stated hereinabove, this petition is dismissed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Raju